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No. 93-6188

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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No. 93-6188

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ROY HECK,

Petitioner,

v.

JAMES HUMPHREY, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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QUESTIONS PRESENTED

1. Whether a prisoner may attack the legality of his state court conviction in a federal action through 42 U.S.C. § 1983, seeking declaratory and monetary relief, without first exhausting state remedies.

2. Whether a prisoner's federal action under 42 U.S.C. § 1983 attacking the legality of his state court conviction should be dismissed, rather than stayed, pending exhaustion of state remedies.

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

STATEMENT

Petitioner, a state prisoner, has attacked the legality of his conviction in a federal action under 42 U.S.C. § 1983, seeking monetary and declaratory relief. The district court dismissed the action without prejudice, finding that petitioner must exhaust state remedies. The court of appeals affirmed.

1. Petitioner is presently confined at the Westville Correctional Center in Westville, Indiana, where he is serving a fifteen-year sentence for killing his wife. The evidence against petitioner at his criminal trial was overwhelming.

On or about January 6, 1986, while marriage dissolution proceedings were pending, petitioner's wife, Rickie Heck, disappeared. Several months later, in October of 1986, her decomposed body was found buried on petitioner's farm. The pathologist opined that she had died as a result of a severe blow to the head. Pet. App. 11a.

The week of Mrs. Heck's disappearance, petitioner was scheduled to stand trial for beating her. When he failed to appear in court, petitioner was arrested. While in jail, petitioner asked his daughter and his girlfriend to sprinkle pepper over a sinkhole on his farm (where the body of his wife was later discovered) and to remove his wife's possessions, including her purse and suitcase, from petitioner's residence on the farm before it was searched by police. The suitcase contained items of female apparel and the purse contained his wife's make-up, social security card and drivers license. Petitioner told his daughter to remain quiet about the removal of his wife's possessions from his home. Petitioner also requested that they telephone the police pretending to be his wife. Id. at 12a.

Following Mrs. Heck's disappearance, petitioner also told various relatives that his wife was taking a trip to Florida. When the Hecks' son went to her trailer, however, he noticed food still on the stove and her belongings in an unusual state of disarray. Ibid.

Shortly after his wife's disappearance, petitioner asked two men in the roofing business to dump old shingles over the area

where his wife's body was buried. Petitioner told the men he wanted the shingles dumped there to cover up the smell of soured corn. One of the men testified that the area appeared to have been recently dug out and smoothed over. Ibid.

In October of 1986, petitioner, upon being served with a warrant to search his farm, fled to Tennessee. He returned shortly and turned himself in to the police. Ibid.

At trial, a number of Mrs. Heck's neighbors testified that they heard an argument between Mrs. Heck and another person near midnight on the day of her disappearance. One witness identified petitioner, by voice, as the person arguing with Mrs. Heck. Id. at 11a-12a.

On July 30, 1987, a jury convicted petitioner of killing his wife. The Indiana Supreme Court upheld petitioner's conviction on direct appeal. Heck v. State, 552 N.E.2d 446 (Ind. 1990). Pet. App. 9a-17a

2. On December 27, 1988, petitioner filed this lawsuit in federal court under 42 U.S.C. §§ 1983, 1985(2), 1986 and 1988.[1] Petitioner alleged that James Humphrey and Robert Ewbank, both Dearborn County prosecutors, and Michael Krinoph, an investigator with the Indiana State Prison, conspired to conduct an illegal search, destroy exculpatory evidence and direct an illegal voice identification procedure with a state witness. Petitioner alleged that this conspiracy prevented him from proving his

[1] Petitioner was denied in forma pauperis status. As a result, respondents were never served with a summons or complaint and thus are not formally parties to this action.

innocence. See Pet. App. 23a. Petitioner sought declaratory relief, compensatory and punitive damages, interest, costs and attorneys' fees. Petitioner based his claim for damages on the lost income caused by his improper confinement. Pet. App. 25a.

The district court dismissed petitioner's section 1983 action, finding that his claim "directly implicate[s] the legality of his confinement." Pet. App. 7a. The district court reasoned that the "exclusive means by which [petitioner may challenge the legality of his confinement] in federal court is through an action for habeas corpus relief, which in turn may be brought only after available state remedies have been exhausted." Pet. App. 7a-8a.

3. The Seventh Circuit unanimously affirmed. Pet. App. 1a-5a. The court of appeals held that petitioner must exhaust his state remedies because, regardless of the relief sought, petitioner challenged the legality of his conviction. Pet. App. 3a. The court of appeals explained that petitioner, "while not explicitly requesting that his conviction be vacated, claims that he would not have been convicted had the defendants not violated his constitutional rights." Id.

The court of appeals next held that petitioner's claim should be dismissed, rather than stayed. The court of appeals acknowledged that it disagreed with the decisions of other circuits holding that the district court should stay rather than dismiss the suit. The court of appeals explained that an automatic stay "gives inadequate weight to the policy of the

statute of limitations, which is to bar stale suits." Ibid. The court of appeals went on to decide that if a prisoner were met with a statute of limitations defense following exhaustion, he could invoke the doctrine of equitable tolling. Ibid. The court of appeals expressed no view on whether the doctrine of equitable tolling would apply in this case because to do so would have been premature. Pet. App. 5a. A majority of the judges on the entire court voted not to rehear the case en banc. Ibid.

4. On June 19, 1990, after the district court dismissed his action under section 1983, petitioner filed a petition for habeas corpus relief under 42 U.S.C. § 2254, in which he again challenged the legality of his conviction. The district court dismissed the action without prejudice because petitioner had failed to exhaust state remedies on his claim of ineffective assistance of counsel. Heck v. Richards, No. S90-205 (N.D. Ind.). On January 22, 1991, petitioner refiled his petition for habeas corpus relief, this time without the ineffective assistance claim. The district court denied his petition. Heck v. Richards, No. S91-40 (N.D. Ind. July 30, 1991). The Seventh Circuit affirmed. Heck v. Richards, No. 91-3034 (7th Cir. Sept. 28, 1992).

5. On November 8, 1993, petitioner filed a second action against respondents under section 1983, raising the identical claims and seeking the identical relief as this action. Heck v. Humphrey, No. NA 93-108-C (N.D. Ind.). The district court granted petitioner in forma pauperis status, finding that

petitioner had exhausted state remedies, as required by the Seventh Circuit's decision here. Respondents have not yet answered or otherwise responded to petitioner's second section 1983 complaint.

REASONS FOR DENYING THE WRIT

This case does not warrant further review. At the threshold, this Court's review would be of no value to petitioner in obtaining the relief he seeks. In the direct appeal of his criminal conviction and in his second petition for habeas corpus relief, petitioner has already had the opportunity to litigate the issues raised in this section 1983 action. The prior judgments would therefore be accorded preclusive effect in his section 1983 action.

In any event, the Seventh Circuit's conclusion that petitioner must exhaust state remedies before he may attack the legality of his conviction in federal court under 42 U.S.C. § 1983 -- the principal issue on which petitioner seeks review -- is consistent with this Court's decisions and with every court of appeals' decision that has addressed the question. The complete uniformity among the dozens of court of appeals' decisions reflects the clarity with which this Court addressed the issue in Preiser v. Rodriguez, 411 U.S. 475 (1973).

Petitioner's assertion that the type of relief sought by a prisoner in a federal lawsuit is the sole determinant of whether he must exhaust state remedies is unsupported by the language of

and policies underlying this Court's decisions. Not surprisingly, petitioner's view, without exception, has been roundly rejected by the lower courts. Petitioner's view was accepted only in a few early dissenting opinions and in dicta -- but never in a holding.

The case with which the Seventh Circuit's decision purportedly conflicts, Mack v. Varelas, 835 F.2d 995 (2d Cir. 1987), did not involve the question presented here. The prisoner in Mack did not attack the legality of his conviction. Nor did Mack hold that the relief sought is the lone factor in determining whether exhaustion is required.

The other court of appeals' decisions cited by petitioner to demonstrate the supposed disarray among the lower courts in applying Preiser also did not involve attacks on the validity of a conviction. While lower courts may have expressed some difficulty in applying Preiser to prisoner claims that are different than those here, such as challenges to conditions of confinement, that confusion would not be resolved by this Court's review of the Seventh Circuit's decision. Thus, this case would be a particularly poor vehicle for revisiting this Court's jurisprudence under Preiser.

This Court's review of the second question raised by petitioner -- whether a prisoner's action should be stayed, rather than dismissed, pending exhaustion of state remedies -- is also not warranted. The conflict among the circuits is a fresh one, which may be resolved by Congress. Moreover, because the

Seventh Circuit provided for equitable tolling of prisoners' claims under section 1983, there is essentially no practical difference between its approach and that of the other circuits. Finally, the Seventh Circuit's decision was proper, so there is no need for this Court to correct that ruling.

1. Because Petitioner's Section 1983 Claims Are Barred by Collateral Estoppel, Review by This Court Would Be of No Value to Petitioner in Obtaining Relief.

Review by this Court is not warranted because it would be of no value to petitioner in obtaining the relief he seeks in his action under 42 U.S.C. § 1983. Petitioner has twice litigated the allegations contained in his section 1983 action and on both occasions has lost. In the direct appeal of his criminal conviction, petitioner attacked the legality of his conviction, claiming that he had been subjected to an illegal investigation. See Pet. App. 13a-16a. And in his habeas corpus action, petitioner reiterated these same allegations, with an equal degree of success.

Accordingly, petitioner would be barred from relitigating these claims in his section 1983 action. A federal court entertaining petitioner's section 1983 action would accord preclusive effect to the issues decided by the state and federal courts. Allen v. McCurry, 449 U.S. 90, 103-04 (1980). A federal court also would accord preclusive effect to those issues that petitioner had the opportunity to litigate -- which plainly includes all claims raised here. Sullivan v. American Casualty Co., 605 N.E.2d 134, 138-39 (Ind. 1992). Indiana, moreover, does

not require mutuality of parties for defensive use of collateral estoppel. Ibid. As the Seventh Circuit recognized, "if his conviction were proper, this suit would in all likelihood be barred by res judicata." Pet. App. 3a. Thus, this Court's review of the Seventh Circuit's decision here would result in little more than an advisory opinion. There is no reason to give petitioner a third bite at the apple.

2. The Decision Below Is Not in Conflict With This Court's Cases or Those of the Federal Courts of Appeals.

A. At the outset, given petitioner's efforts to manufacture confusion where none exists, it is important to clarify what petitioner claimed in his section 1983 action and what the Seventh Circuit decided. Petitioner's claim was narrow: he attacked the legality of his conviction, alleging that respondents conspired to subject him to an illegal investigation and prevent him from proving his innocence. Pet. App. 21a, 23a. Petitioner sought a declaration that he was the victim of an unconstitutional investigation and damages to compensate him for lost income caused by his incarceration. Id. at 25a. Petitioner did not explicitly seek release from confinement.

Following its own long-standing precedent, the Seventh Circuit held that, because petitioner's claim consisted solely of an attack on the legality of his conviction, he was required to exhaust state remedies, regardless of the relief sought. As a prerequisite to obtaining the relief he requested, the court explained, petitioner would have to prove that he was wrongfully convicted. Id. at 3a.

Petitioner asserts that the Seventh Circuit's holding is inconsistent with the decisions of this Court and the decision of the Second Circuit in Mack v. Varelas, 835 F.2d 995 (2d Cir. 1987). According to petitioner, it is the relief sought by a prisoner in a federal action that dictates whether he must exhaust state remedies; the legal basis of the prisoner's claim is of no import. Each of petitioner's assertions is incorrect.

In Preiser v. Rodriguez, 411 U.S. 475 (1973), this Court explained that a prisoner's attack on the legality of his conviction lies within the very "core of habeas corpus." Id. at 489. Accordingly, "a state prisoner challenging his conviction must first seek relief in a state forum," notwithstanding that such claims may fall within the literal terms of section 1983. Ibid. Exhaustion of state remedies for attacks on the "fact or duration of confinement," this Court emphasized, is mandated by "considerations of federal-state comity," id. at 491, and "'a proper respect for state functions,'" ibid. (quoting Younger v. Harris, 401 U.S. 37, 44 (1971)). So uncontroverted is this principle that in Preiser, plaintiff-respondent conceded that a prisoner attacking the validity of his conviction must exhaust state remedies. Id. at 489-90.[2]

Moreover, the Court in Preiser grounded its analysis on both the nature of the prisoner's claim and the type of relief

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[2] See also Brief for Respondent at 12-13, Oswald v. Rodriguez, No. 71-1369, cert. granted, 407 U.S. 919 (1972).

sought.[3] In finding that exhaustion is required for those claims that lie at the core of habeas corpus, the Court did not, as petitioner contends, focus exclusively on the relief requested. Nor did the Court suggest that in determining the need for exhaustion the relief requested should be given any greater weight than the nature of the claim.[4]

It is true, as petitioner notes, that the Court in dictum commented that a prisoner's claim for damages would be cognizable under section 1983.[5] But this dictum, by its own terms, was limited to circumstances in which a prisoner does not attack the validity of his conviction. The Court's dictum, therefore, has no application here.

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[3] E.g. Preiser 411 U.S. at 489 (exhaustion required "in the case of a state prisoner's challenge to the fact or duration of his confinement"); id. at 490 ("In short, Congress has determined that habeas corpus is the appropriate remedy for state prisoners attacking the validity or the fact or length of their confinement, and that specific determination must override the general terms of § 1983.").

[4] Petitioner himself acknowledges this point but later retrenches, claiming, incorrectly, that the nature of the relief alone determines the necessity for exhaustion. Compare Pet. 12 ("Thus, the Court's holding [in Preiser] turned on both the nature of the prisoners' claim (a direct attack on the 'fact or duration' of their confinement) and the nature of the relief sought in the lawsuit.") (emphasis in original) with Pet. 16 ("In Preiser, Wolff, and Gerstein, then, the Court plainly instructed that the nature of relief sought in a federal lawsuit filed by a state prisoner is the critical factor in determining whether the lawsuit was properly characterized as a Section 1983 action, a habeas action, or both.") (emphasis in original).

[5] Preiser, 411 U.S. at 494 ("If a state prisoner is seeking damages, he is attacking something other than the fact or length of his confinement, and he is seeking something other than immediate or more speedy release -- the traditional purpose of habeas corpus. In the case of a damages claim, habeas corpus is not an appropriate or available federal remedy.").

Furthermore, contrary to petitioner's suggestion, nothing in Wolff v. McDonnell, 418 U.S. 539 (1974) or Gerstein v. Pugh, 420 U.S. 103 (1975) conflicts with the decision below. In Wolff, state prisoners initiated actions in federal court under section 1983, claiming that the procedures used by the parole board to revoke good-time credits were constitutionally defective. The prisoners sought an injunction to restore their good-time credits and damages to compensate them for the procedural due process violations. Consistent with its holding in Preiser, the Court held that the claims for damages were cognizable under section 1983 but the claims for injunctive relief were not. Wolff, 418 U.S. at 554-55. In Gerstein, pre-trial detainees who were arrested without a warrant claimed that the state's failure to provide them a prompt probable cause hearing violated the fourth and fourteenth amendments. In a brief footnote, the Court stated without elaboration that plaintiffs need not exhaust because they had not requested release from confinement. Gerstein, 420 U.S. at 107 n.6.

Thus, neither Wolff nor Gerstein had any occasion to address the exhaustion requirement where, as here, a prisoner attacks the legality of his conviction and also seeks damages based on the confinement itself. In Wolff and Gerstein, to provide prisoners with relief, a federal court need not have reviewed the propriety of a conviction or ordered release from confinement. For those reasons, the claims for monetary and injunctive relief in Wolff and Gerstein did not raise the federalism concerns present in

Preiser and here. The Seventh Circuit's decision, therefore, is entirely consistent with this Court's decisions.[6]

B. In light of this Court's clear teachings, it is hardly remarkable that in the twenty years since Preiser not a single federal court of appeals has adopted petitioner's approach. On the contrary, numerous lower court decisions have thoroughly considered and rejected the notion that a prisoner attacking the legality of a conviction need not exhaust state remedies, even where he seeks damages.[7] It bears emphasis, moreover, that this

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[6] If this Court had decided, as petitioner suggests, that a prisoner may maintain a damages claim under section 1983 attacking his conviction, then the Court's statement in Tower v. Glover, 467 U.S. 914 (1984) would have been meaningless. In Tower, the Court stated that it had "no occasion to decide if a Federal District Court should abstain from deciding a § 1983 suit for damages stemming from an unlawful conviction pending the collateral exhaustion of state-court attacks on the conviction itself." Id. at 923. Significantly, following its comment, the Court cited, among other cases, Preiser and Meadows v. Evans, 529 F.2d 385, 386 (5th Cir. 1976), aff'd en banc, 550 F.2d 345 (5th Cir.), cert. denied, 434 U.S. 969 (1977), a decision that squarely holds that a prisoner may not sue for damages under section 1983 based on an attack on his conviction. Petitioner's contention, therefore, that the Court's comment in Tower has no relevance here, but is limited to an entirely different issue, is untenable. See Pet. 22. See also Young v. Kenny, 907 F.2d 875, 877-78 (9th Cir. 1990) ("Because the statement would make no sense if Wolff had resolved the question we face today, we presume that the Tower majority deliberately included it in its opinion to signal that the Court deems itself not to have ruled on our issue."), cert. denied, 498 U.S. 1126 (1991).

[7] See, e.g., Tedford v. Hepting, 990 F.2d 745, 748-49 (3d Cir.), cert. denied, 114 S. Ct. 317 (1993); Scruggs v. Moellering, 870 F.2d 376, 378-79 (7th Cir.), cert. denied, 1493 U.S. 954 (1989); Williams v. Hepting, 844 F.2d 138, 143-44 (3d Cir.), cert. denied, 488 U.S. 851 (1988); Spina v. Aaron, 821 F.2d 1126, 1127-28 (5th Cir. 1987); Feeney v. Auger, 808 F.2d 1279, 1281 (8th Cir. 1986); Leonard v. Hammond, 804 F.2d 838, 840 (4th Cir. 1986); Monk v. Secretary of Navy, 793 F.2d 364, 366-68 (D.C. Cir. 1986); Hadley v. Werner, 753 F.2d 514, 516 (6th Cir. 1985) (per curiam); Caldwell v. Line, 679 F.2d 494, 496 (5th Cir. 1982); Richardson v. Fleming,

Court consistently has denied petitions for certiorari in cases raising the precise issue presented here (including as recently as this Term), and nothing in the law has changed that would cause this issue to warrant the Court's review now. See supra note 7. If anything, the continued unanimity among the lower courts has further diminished the need for this Court's review.[8]

Petitioner is wrong when he asserts that the Seventh Circuit's decision conflicts with Mack v. Varelas, 835 F.2d 995 (2d Cir. 1987). Mack, in contrast to petitioner, "disclaimed any challenge to the validity of his conviction or the propriety of his custody" -- a fact found by the district court and reaffirmed by the court of appeals. Id. at 997. See id. at 999. Rather, Mack sought damages, claiming that the sheriff's failure to produce a witness at his trial violated his sixth amendment rights. Notably, the Second Circuit began its analysis by reiterating the principle applied by the Seventh Circuit here.

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651 F.2d 366, 372-73 (5th Cir. 1981); Franklin v. Webb, 653 F.2d 362, 363-64 (8th Cir. 1981); Hamlin v. Warren, 664 F.2d 29, 30-32 (4th Cir. 1981), cert. denied, 455 U.S. 911 (1982); Parkhurst v. State of Wyoming, 641 F.2d 775, 777 (10th Cir. 1981) (per curiam); Meadows v. Evans, 550 F.2d 345, 349 (5th Cir.) (en banc) (aff's per curiam, 529 F.2d 385 (5th Cir. 1976)), cert. denied, 434 U.S. 969 (1977); Fulford v. Klein, 529 F.2d 377, 381 (5th Cir. 1976); Guerro v. Mulhearn, 498 F.2d 1249, 1252-53 (1st Cir. 1974); accord Martin v. Merola, 532 F.2d 191, 194 (2d Cir. 1976).

[8] As petitioner points out, three of the early decisions produced isolated flickers of dissent, which by now have been completely extinguished. See Fulford, 529 F.2d at 383 (Tuttle, J., concurring in part and dissenting in part); Meadows, 550 F.2d at 349 (Tjoflat, J., concurring in part and dissenting in part); Hamlin, 664 F.2d at 33-34 (Winter, C.J., dissenting). In any event, this Court need not review this case to resolve the dispute between the majorities and dissents in those decisions. The circuit courts have long since resolved those disputes.

As the Second Circuit made clear, "A state prisoner may not bring a civil rights action in federal court under § 1983 to challenge either the validly of his conviction or the fact or duration of his confinement. Those challenges may be made only by petition for habeas corpus." Id. at 998. From there, the Second Circuit carefully examined both the nature of Mack's claim and the type of relief requested, concluding that because he was not attacking the validity of his conviction, nor was he seeking immediate or more speedy release, Mack could maintain his suit under section 1983 without exhausting state remedies. Ibid. The Court's detailed analysis of the nature of the claim and the relief requested caused it to conclude that Mack need not prove that he was wrongfully convicted in order to obtain money damages. Ibid. Here, by contrast, the very essence of petitioner's claim for damages is that the conviction was wrongful. The measure of his damages, moreover, are designed to compensate him for lost income cause by his allegedly improper confinement. Pet. App. 23a-25a. Thus, putting to one side that Mack does not even conflict with the Seventh Circuit's decision, Mack fails to support petitioner's broader proposition: that the type of relief requested is the sole determinant of the need for exhaustion.[9]

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[9] If that were not enough, Mack's entire discussion of the exhaustion requirement appears to be dictum. Mack did not appeal the district court's decision ordering him to exhaust. Mack only appealed the district court's decision to dismiss, rather than stay, his action, and the Second Circuit granted Mack's request. Id. at 998. Indeed, in Jewell v. County of Nassau, 917 F.2d 738 (2d Cir. 1990) (per curiam), the Second Circuit properly declined to replicate Mack's approach. In Jewell, the district court dismissed a section 1983 action by a prisoner attacking the

In a further effort to generate the appearance of confusion among the lower courts, petitioner cites several cases that, like Mack, present questions that are different than those raised here and that would not be resolved by review of this case. For example, petitioner suggests that the lower courts disagree about the scope of the required exhaustion, with the Fifth Circuit demanding exhaustion of both state and federal remedies. See Pet. 19 n.8. Since petitioner was not required to exhaust federal remedies, that conflict would not be resolved by review here, for petitioner does not have standing even to raise the issue.

In a similar vein, petitioner notes that in Gwin v. Snow, 870 F.2d 616, 623 (11th Cir. 1989) and Young v. Kenny, 907 F.2d 875, 877 (9th Cir. 1990), cert. denied sub nom. Bressman v. Farrier, 498 U.S. 1126 (1991) panels from the Eleventh and Ninth Circuits remarked in dicta that the requested relief should determine whether an action can lie under section 1983. But review here is not warranted simply to correct lower courts' dicta. More fundamentally, neither Gwin nor Young involved attacks on the validity of a conviction. Those decisions addressed challenges to the prisons' procedures for granting parole and compassionate leave and for awarding sentence credits, respectively.

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legality of his conviction, finding the prisoner was required to exhaust. As in Mack, Jewell appealed only the district court's order to dismiss, rather than stay, his claim. Accordingly, the Second Circuit did not address the exhaustion question.

Indeed, questions regarding the applicability of the exhaustion requirement for prisoners' claims under section 1983 arise in a myriad of contexts, including challenges to place of confinement, conditions of confinement, procedures for reduction of good-time credits, procedures for post-conviction review, detainers, extradition, pre-trial custody, and probation.[10] Each type of claim raises its own unique questions regarding the federalism concerns animating the exhaustion requirement and the intent of Congress. Thus, to the extent that any confusion exists in the lower courts regarding the exhaustion requirement for challenges other than those involving the validity of a conviction, this case would be a poor vehicle for resolving that confusion. This Court's review is not warranted.

3. There Is No Reason to Review the Seventh Circuit's Decision to Dismiss, Rather than Stay, Petitioner's Section 1983 Action.

Although the Seventh Circuit's decision that petitioner's claim should be dismissed, rather than stayed, arguably conflicts with decisions of other circuits, review of that issue at this time and in this case is not warranted for several reasons.

The Seventh Circuit's decision is the first to hold that a

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[10] See, e.g., Kirby v. Dutton, 794 F.2d 245 (6th Cir. 1986) (procedures for post-conviction review); Alexander v. Johnson, 742 F.2d 117 (4th Cir. 1984) (parole); Stevens v. Heard, 674 F.2d 320 (5th Cir. 1982) (detainer); Brown v. Nutsch, 619 F.2d 758 (8th Cir. 1980) (extradition); Waste Management of Wisconsin v. Fokakis, 614 F.2d 138 (7th Cir.) (fines without imprisonment), cert. denied, 449 U.S. 1060 (1980); Wright v. Cuyler, 624 F.2d 455 (3d Cir. 1980) (conditions of confinement); Williams v. Ward, 556 F.2d 1143 (2d Cir.) (procedural due process), cert. dismissed, 434 U.S. 944 (1977).

prisoner's claim under section 1983 that requires exhaustion should be dismissed and that equitable tolling should be applied, if appropriate, when the prisoner refiles. The freshness of this conflict is itself good reason to decline further review now.

There is some probability that Congress will resolve this issue, particularly if it is as important as petitioner suggests. After all, as petitioner acknowledges, Congress has recently demonstrated its willingness to address questions surrounding exhaustion for claims under section 1983. See 42 U.S.C. § 1997e.

In the meantime, there is no pressing need to review the issue presented here. For those prisoners who exhaust diligently and in good faith, there is little, if any, practical difference between the approach adopted by the Seventh Circuit and that of other circuits. What is more, the approach of the Seventh Circuit was clearly the proper one, so there is no reason to correct this particular ruling.

The purpose behind the two approaches is identical: to protect prisoners, who have diligently exhausted state remedies, from a statute of limitations defense to meritorious section 1983 actions. The stay, however, is a blunter tool. As the Seventh Circuit explained, an automatic stay "gives inadequate weight to the policy of the statute of limitations, which is to bar stale suits. Should Heck dawdle in exhausting his state remedies, this suit might resume almost a decade after the statute of limitations had expired." Pet. App. 3a. Thus, the Seventh Circuit's approach of providing for equitable tolling at once

recognizes the concerns of prisoners and preserves the policies of the statutes of limitations.

Petitioner inaccurately asserts that the Seventh Circuit's rule will result in additional litigation over disputes about tolling. There is no sound basis to conclude that the resources needed to adjudicate the applicability of a tolling provision are any greater than those required to adjudicate stale claims.

Nor is petitioner correct that the Seventh Circuit's approach conflicts with Deakins v. Monaghan, 484 U.S. 193 (1988). As petitioner points out, Deakins commented that federal courts have an "unflagging obligation . . . to exercise the jurisdiction given." Id. at 204 (citation and quotation omitted; ellipsis in original). But this Court in Preiser held that habeas corpus is the "exclusive remedy" for cases such as this, thus concluding that jurisdiction has not been given to adjudicate claims under section 1983 prior to exhaustion of state remedies required for habeas relief. 411 U.S. at 489. Review of this issue is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: December 15, 1993

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December 15, 1993

William K. Suter
Clerk
Supreme Court of the United States
One 1st Street, N.E.
Washington, D.C. 20543

Re: Heck v. Humphries, No. 93-6188

Dear Mr. Suter:

I have enclosed for filing twelve type-written copies of Brief for the Respondents in Opposition and a certificate of service in the above-referenced case. I have also included an appearance form that substitutes as counsel of record Matthew R. Gutwein for Wayne E. Uhl.

Thank you.

Sincerely

Matthew R. Gutwein

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

No. 93-6188

ROY HECK,

Petitioner,

v.

JAMES HUMPHREY, et al.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 1993, I served one copy of the Brief of the Respondents in Opposition, as required by Rule 29.3 of the Rules of this Court, by depositing that document in the United States mail, postage prepaid and properly addressed to the following counsel for the petitioner:

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APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. 93-6188

Roy Heck (Petitioner or Appellant) vs. James Humphries, et al. (Respondent or Appellee)

The Clerk will enter my appearance as Counsel of Record for James Humphries, Robert Ewbank, Michael Krinoph

(Please list names of all parties represented)

who IN THIS COURT is ☐ Petitioner(s) ☒ Respondent(s) ☐ Amicus Curiae ☐ Appellant(s) ☐ Appellee(s)

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature _____

(Type or print) Name Matthew R. Gutwein

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

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Rule 9

APPEARANCE OF COUNSEL

.1. An attorney seeking to file a pleading, motion, or other paper in this Court in a representative capacity must first be admitted to practice before this Court pursuant to Rule 5. The attorney whose name, address, and telephone number appear on the cover of a document being filed will be deemed counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record must be clearly identified.

.2. An attorney representing a party who will not be filing a document must enter a separate notice of appearance as counsel of record indicating the name of the party represented. If an attorney is to be substituted as counsel of record in a particular case, a separate notice of appearance must also be entered.

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